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March 22, 1961

Mr. Richard J. Riley
Deputy County Attorney
Cochise County
Courthouse
Bisbee, Arizona

Dear Mr. Riley:

Originator
A. E. LARSON
I Concur
S. J. MACALUSO
MORRIS ROZAR
I Concur
CLARK KENNEDY

This will acknowledge receipt of your letter dated February 15, 1961, in which you have requested an opinion concerning the confinement of persons to the county jail by a police justice. Your questions are set forth below:

"1. May a police justice, after conviction or a plea of guilty, sentence a misdemeanor who has violated a State statute other than an offense under Title 28, to the county jail?

"2. If your answer to question No. 1 is in the affirmative, may the county require the city to reimburse the county for the expenses of confining the prisoner in the county jail?"

The answer to question No. 1 is yes, and the answer to question No. 2 is no.

The applicable statutes are as follows:

"§22-301. Jurisdiction of criminal actions

A. The justice of the peace courts have jurisdiction of the following offenses committed within their respective precincts in which such courts are established, subject to the right to change of venue as provided by law.

1. Petty theft.

2. Assault or battery not charged to have been committed upon a public officer in the discharge of his duties, or to have been committed with such intent as to render the offense a felony.

3. Breaches of the peace, routs, affrays, and committing a wilful injury to property.

4. Misdemeanors and criminal offenses punishable by a fine not exceeding three hundred dollars, or

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imprisonment in the county jail not to exceed six months, or by both such fine and imprisonment."

"§22-402. Establishment and jurisdiction

A. In each city or town incorporated under the general laws of this state, there shall be a police court.

B. Every court established pursuant to subsection A, and every court established in a city incorporated under the provisions of article 5, chapter 2, title 9, or incorporated under the provisions of a special act or charter, has jurisdiction of all cases arising under the ordinances of the city or town, and has jurisdiction concurrently with justices of the peace of precincts in which the city or town is located, of violations of laws of the state committed within the limits of the city or town."

"22-404. Disposition of fines and forfeitures

All fines and forfeitures collected in a police court maintained by a city or town which pays the salaries of the police court officers shall be paid to the treasurer of the city or town in which such court is located."

"§31-121. Duty of sheriff to receive and provide for prisoners; contracts for furnishing food

A. The sheriff shall receive all persons committed to jail by competent authority and provide them with necessary food, clothing and bedding, the cost of which shall be a county charge."

A city is a political subdivision of the state and derives its existence and powers from the legislature. When the legislature gave concurrent jurisdiction to the city police court, it would appear that the intention was to permit a city to handle all criminal violations on the same level as the justices of the peace within its corporate limits, which would include violations of city ordinances as well as offenses against the state. Such delegation of authority would permit a wider range of independence on the part of a city and permit it to exclude, to a certain degree, the interference of its local affairs by another political subdivision of the state.

The city is merely another arm of the state government in

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carring out the enforcement of state criminal statutes through its police courts. The violations of the state statutes still remain offenses against the state.

Inasmuch as the county jail is maintained for the imprisonment of those misdemeanants committing state offenses within the county, then the county jail facilities should also be available to the city police courts for the confinement of violators within the corporate limits of the city.

It would also appear that since the jurisdiction of the city police courts is concurrent with that of justices of the peace of violations of state laws committed within the limits of the city or town, that the city police justice would also have the concurrent power to sentence a misdemeanor to the county jail.

The provisions of A.R.S. §22-404 do not tend to indicate that the city police justice does not have the power to sentence a person to the county jail. The apparent purpose of this statute is to permit the city to retain fines and forfeitures for financial assistance in administering the laws of the state.

However, where the city has erected a jail, then the city is bound to make use of its facilities so far as the facilities are adequate, both for the imprisoning of those violating city ordinances as well as those violating the state statutes.

When a person is sentenced to the county jail by competent authority, the sheriff must receive such person and provide him with necessary food, clothing and bedding, the cost of which shall be a county charge, and the county cannot require the city to reimburse it for these expenses.

For violations of city ordinances, a police justice can sentence a person to the county jail only if an agreement is made between the city and county to that effect and the county may require the city to reimburse it for the expenses of confining such prisoners.

We trust this will be of assistance to you in solving your problems.

Very truly yours,

ROBERT W. PICKRELL
The Attorney General

ALVIN LARSON
Assistant Attorney General

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